or compensation and that the right to receive same is entirely dependent upon contract." The Court held under the facts of that case that the language of the collective bargaining agreement was not "free of ambiguity" in that 1) the contract did not provide that "all who are employees on June 1" but rather stated "all employees who on June 1, . . ." 2) the contract failed to define "continuous service." Based upon these ambiguities the Court concluded that by depriving these employees of their vacation pay it "would be reading into the contract a provision for a forfeiture," which did not exist. Accordingly, the Court affirmed the Chancellor finding that the employees were entitled to recover vacation pay from July 7, 1955, to the date of their discharge.

The contract in the instant case provides explicitly for "continuous service." Section XI, paragraph 48, states:

> An employee's continuous service for vacation purposes shall be deemed to begin with his Continuous Service Date (as defined in Paragraph 49) and shall be broken when an employee has quit, or has been discharged, or has remained in a status of layoff for a continuous period of two (2) years, *or has otherwise separated from Company's employment.* If an employee whose Continuous Service has been broken is later re-employed, he will thereafter, if retained in the Company's employment, establish a new Continuous Service Date in the same manner as other newly hired employees. (Emphasis supplied)

Further, Section XI, paragraph 50, describes the "Qualification for Vacation" in the following terms:

> a) Vacations for all employees will be granted on a calendar year basis in accordance with the following eligibility requirements.
>
> 1) Employees who have one (1) or more years of *continuous service as of January 1* (except for

new employees provided for below) will be granted vacations during the calendar year January 1 to December 31, provided they have worked a minimum of one hundred fifty (150) days during the preceding calendar year . . .

2) A new employee shall become eligible for his first vacation with pay upon his first anniversary date provided he has worked a minimum of one hundred fifty (150) days during his first anniversary year, counting as days worked those set forth in Item (1) above. *On the following* January 1, he shall be eligible for a vacation with pay in accordance with the provisions as set forth in Item (1) above. (Emphasis supplied)

Finally, Section XI, paragraph 52, specifies the means by which vacation pay is to be computed.

Vacation pay for each week of vacation which an employee is entitled to receive shall be computed by determining *the total money earned from January 1 (of the year in which the vacation is taken)* through the last payroll week completed prior to the date of the vacation and dividing that sum by the number of weeks worked since said January 1 through such payroll week . . . (Emphasis supplied)

It is to be noted further that Section XI, paragraph 59(a) provides as follows:

Employees retiring pursuant to the compulsory retirement provisions of paragraph 67(a), shall be granted a pro rata portion of the amount of vacation described in paragraph 51, computed as follows:

For each period of three (3) consecutive months (from January 1 of the year in which the employee retires to date of retirement) in which the employee

> works a minimum of thirty-eight (38) days, he shall be granted one-fourth (¼) of the amount of vacation described in paragraph 51. Such pro rata vacation shall be in addition to the vacation, if any, for which the employee qualified as of the preceding December 31.

This contract provision is most significant in that it indicates clearly that the parties contemplated and negotiated upon the subject of pro rata vacation pay for those employees terminated by reason of retirement. If, as plaintiffs appear to contend, vacation pay accrues as additional wages and these employees are entitled to their accrued vacation pay by reason of the fact that they have accrued such pay by working 150 days, then it would appear that Section 59(a) of Article XI is superfluous. If the plaintiff's interpretation of the contract provisions regarding vacation pay is accepted, a retiring employee with 150 days of service in 1966 would be entitled to full vacation pay without further provision therefor in the contract. However, the contract specifically provides that retiring employees are to receive a pro rata portion of their vacation pay based upon 38 days work for each three month period from January 1 of the year of retirement to the date of retirement, thus specifically excluding retiring employees from the January 1 eligibility date. No other class of employees is so excluded from the "continuous service" requirement. This provision of the contract would indicate an intention to exclude only retiring employees from the "continuous service" requirement of the contract and from the "January 1" eligibility requirement. See *Brackett* v. *Eastern Boot & Shoe Co.*, (Mo. 1965) 388 S.W. 2d 842.

The plaintiff also relies upon paragraph 54 in support of its position. This paragraph provides:

> Employees who have earned vacations under this vacation plan, but who may become sick, laid off by

management, or injured prior to the date selected for their vacation pay, upon request to the management shall receive their vacation."

It would seem that this provision, applying, as it does, only to "employees who have earned vacations," is consistent with the contract interpretation that the employees meet the January 1 employment eligibility requirement for obtaining vacation pay.

Applying the general principles heretofore outlined by the Court to the contract provisions in the instant case, it appears clear that the parties contracted that two conditions precedent must exist in order for an employee to be eligible for vacation pay, that is, (1) that the employee have worked a minimum of 150 days during the preceding year, and (2) that the employee was employed upon January 1 of the calendar year during which the vacation is to be taken. The language of the contract appears clear and free from ambiguity in this respect.

Accordingly, the plaintiff's motion for summary judgment will be denied and the defendant's motion for summary judgment will be granted. An order will enter sustaining the defendant's motion and dismissing the lawsuit.

FRANK W. WILSON
United States District Judge

* * *

Order

This is an action instituted pursuant to § 301 of the Labor-Management Relations Act (29 U.S.C. § 185) for the recovery of vacation pay allegedly due unto employees of the plaintiff's union under a collective bargaining agreement. The case is before the Court upon cross motions for summary judgment. Having considered the respective motions, the record in the case, and the briefs of the parties, and for the reasons set forth in a memorandum

opinion filed herein, the Court is of the opinion that the plaintiff's motion for summary judgment should be denied, that the defendant's motion for summary judgment should be sustained, and that this lawsuit should be dismissed.

It is accordingly ORDERED that the plaintiff's motion for summary judgment be and the same is hereby denied. It is FURTHER ORDERED that the defendant's motion for summary judgment be and is hereby sustained. It is FURTHER ORDERED that this lawsuit be and the same is hereby dismissed.

APPROVED FOR ENTRY.

FRANK W. WILSON
United States District Judge

ATTEST:
A true copy.
Certified this 10-20-70

Earl D. Saulpaw, Jr., Clerk
By Bertha Morgan
Deputy

APPENDIX C

Order

This case is before the Court upon the plaintiff's motion seeking reconsideration of the Court's prior order denying the plaintiff's motion for summary judgment and dismissing the lawsuit. The plaintiff contends in support of its motion that the Court erred in basically two respects:

1) in attaching undue weight to certain affidavits submitted by representatives of the defendant Company; and

2) in failing to follow the applicable and controlling case law.

In this latter regard, the plaintiff relies heavily upon an arbitration decision, *Telescope Folding Furniture Company*, 49 L.A. 837 (1967), written by Archibald Cox, Professor of Law at Harvard University. However, it should be noted that in this opinion Mr. Cox states:

> "There is no clause stipulating that vacations shall be limited to workers on the payroll, or on the seniority list, or otherwise in the Company's employ, on August 1 or any other particular date. Such clauses are quite common in collective agreements, although they are probably omitted more often than they are included. If there were such a clause in the Telescope contract, the Company's position would be correct. In fact, there is none. The arbitrator cannot ignore the omission of such critical words."

In the instant case, this Court concluded, based upon the specific contract language in the Lookout Oil and Refining Company agreement, that the parties contracted that two conditions precedent must exist in order for an employee to be eligible for vacation pay, that is, (1) that the employee have worked a minimum of 150 days during the preceding

year, and (2) that the employee was employed upon January 1 of the calendar year during which the vacation is to be taken. In reaching this conclusion, the Court outlined the relevant case law, past practices of the Company, and certain principles applicable generally to the construction of collective bargaining agreements. The ultimate conclusion reached by the Court was based primarily upon the contract language as agreed to by the parties. Precedent, past practices, and general principles at most provide the Court with guidelines. "Each labor contract stands on its own feet." See *Telescope Folding Furniture Company, supra.*

Having reviewed the record and having considered the plaintiff's motion, brief and supporting affidavit, the Court remains of the opinion that the former action in dismissing the lawsuit was proper for the reasons stated in the Court's memorandum entered herein. The motion to reconsider will accordingly be denied.

It is SO ORDERED.

APPROVED FOR ENTRY.

FRANK W. WILSON
United States District Judge

ATTEST:

A true copy.

Certified this 11-30-70

Earl D. Saulpaw, Jr., Clerk
By Bertha Morgan
Deputy

APPENDIX D

Amendment V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX E

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. (June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.)

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a

summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. (As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963.)